

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8308/2019

Sati Samat Bahu-Uddeshiya Shikshan Sanstha, through its President Shri Dinesh Laddha office at
Manoharrao Naik Vidyalaya Pardi, Tq. Pusad, Dist. Yavatmal.

-VERSUS-

Santosh Ganpatrao Sonone and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A.J. Gilda, Advocate for the petitioner.
Shri N.R. Patil, A.G.P. for the Respondent no. 3.
Shri P.S. Patil, Advocate for respondent no.1.

CORAM : MANISH PITALE, J.

DATE : SEPTEMBER 24, 2020.

Hearing was conducted through Video
Conferencing and the learned Counsel agreed that the audio
and visual quality was proper.

2. The petitioner-Management has challenged judgment and order passed by the School Tribunal, whereby an appeal filed by the respondent no.1 under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977, was allowed and consequential reliefs were granted to respondent no.1.

3. The respondent no.1 filed appeal before the School

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Tribunal raising grievance about promotion order to the post of Headmaster issued in favour of respondent no.2. It was claimed by respondent no.1 that since both he and the respondent no.2 were appointed on the same day and the respondent no.1 was elder in age, he had a higher claim on the post of the Headmaster. As regards, the superior claim of another employee i.e. Manda Sukhadeorao Bhagat, it was claimed by respondent no.1 that the said person had relinquished her claim to the post of Headmaster in terms of Rule 3(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. On this basis, it was contended on behalf of the respondent no.1 before the Tribunal that the promotion order issued in favour of respondent no.2 deserved to be set aside and that a direction was required to be given to promote respondent no.1 to the post of Headmaster w.e.f. 01/09/2018.

4. The Tribunal took into consideration the contentions raised by the rival parties. The *inter se* seniority between the parties was also appreciated and upon accepting the arguments raised on behalf of the respondent no.1, by the

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impugned judgment and order, the appeal was allowed. The order promoting respondent no.2 to the post of Headmaster was set aside and the petitioner herein was directed to promote respondent no.1 to the post of Headmaster w.e.f. 01/09/2018 and further to pay all consequential salary and other emoluments difference/arrears to the respondent no.1 within three months.

5. The said judgment and order of the Tribunal is subject matter of challenge before this Court. The learned counsel appearing for the petitioner vehemently contended that the Tribunal committed a grave error in holding in favour of respondent no.1 as the true purport of Rule 3(3) of the said Rules was not applied by the Tribunal to the facts of the present case. It is further submitted that even if the date of appointment of the respondents no.1 and 2 was the same, the Tribunal failed to give a finding as regards the extent of continuous service *inter se* between the two respondents. It was further submitted that the Tribunal did not appreciate the fact that the aforesaid Manda S. Bhagat, who had a superior claim over the respondent no.1, was not a party before the

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Tribunal. On this basis, it was submitted that the impugned order deserved to be set aside.

6. Shri P.S. Patil, learned counsel for respondent no.1 supported the impugned judgment and order passed by the Tribunal. It was submitted that the said Manda S. Bhagat had indeed given no objection to promotion of respondent no.1 to the post of Headmaster thereby relinquishing her claim in terms of Rule 3(3) of the aforesaid Rules. It was further submitted that even before this Court an affidavit is now on record sworn by the said person, reiterating the fact that she had relinquished her claim to the post of Headmaster notwithstanding her superior claim to that of respondent no.1. It was submitted that the respondent no.2 never challenged the impugned judgment and order of the Tribunal and that this factor also needs to be appreciated by this Court while considering the present writ petition.

7. The learned A.G.P. appeared on behalf of the respondent no.3.

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8. It is interesting that in the present case, the impugned judgment and order of the Tribunal has been made subject matter of the challenge by the Management and not by the respondent no.2 whose promotion stood set aside by the order of the Tribunal. The learned counsel appearing for the petitioner-Management has raised various contentions as noted above.

9. But, a perusal of the impugned judgment and order, the relevant Rules and documents on record shows that the findings rendered by the Tribunal cannot be said to be erroneous. The *inter-se* seniority between the parties has been noted by the Tribunal. It is undisputed that the respondent nos.1 and 2, both were appointed on the same date i.e. on 21/06/1999 and further that the respondent no.1 is clearly elder in age as compared to the respondent no.2. As regards, the contention raised on behalf of the petitioner Management concerning continuous service rendered by the respondent no.2, it would have been a relevant factor if any dispute had been raised with regard to the same. Any material or information with regard to the same was in fact in the

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knowledge of the petitioner-Management itself and therefore, in the absence of any material to show that the respondent no.1 had lesser continuous service as compared to the respondent no.2, nothing can be said on the said aspect.

10. As regards non-compliance of Rule 3 (3) of the said Rules, the Tribunal appears to have come to the conclusion that there was substantial compliance of the said Rule, on the basis of the documents on record, particularly the one executed by aforesaid Manda S. Bhagat relinquishing her claim to the post of Headmaster. It is another matter that a fresh affidavit dated 16/09/2020 has also been placed on the record of this Court sworn by the very same person reiterating the relinquishment of her claim to the post of Headmaster.

11. In view of above, it is clear that the petitioner-Management is raising various grounds of challenge to the findings rendered by the School Tribunal, which this Court has found to be unsustainable and the real aggrieved party i.e. respondent no.2 has not even cared to challenge the impugned order passed by the School Tribunal.

12. In view of the above, it is found that there is no substance in the present writ petition and accordingly it is dismissed. No costs.

JUDGE

R.S. Sahare